



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,671	07/27/2006	Michael Maschke	2003P17536WOUS	8478

7590 08/23/2011
Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER

BRUTUS, JOEL F

ART UNIT	PAPER NUMBER
----------	--------------

3777

MAIL DATE	DELIVERY MODE
-----------	---------------

08/23/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/587,671	Applicant(s) MASCHKE, MICHAEL	
	Examiner JOEL F. BRUTUS	Art Unit 3777	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 July 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Tse Chen/
Supervisory Patent Examiner, Art Unit 3777

/JOEL F BRUTUS/
Examiner, Art Unit 3777

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Banik et al don't teach mention controlling an x-ray imaging unit for taking a high energy of an adjuvant inserted within an object.

However, the examiner relies on the following for the teaching of controlling an x-ray imaging

Pronk discloses a computer that sets and controls an X-ray imaging device based on specific information of a patient such as body part to be examined by reading a chip card within which the information is stored [see column 1 lines 18-30]

In addition, Malackowski discloses a control console that controls an image guided surgery based on reading RFID of tools, prompt implant detection, identify and verify implant [see fig 27, 0040] and further mention implant recognition system of this invention can be used to facilitate the performance of image guided surgery [see 0040 and fig 27].

Furthermore, Whipple et al disclose a code has instructions to control image contrast [see abstract] which can be used to control contrast between the adjuvant and surrounding regions.

Therefore, one skilled in the art at the time the invention was made would have been motivated to combine Banik with Malackowski and Pronk by controlling an x-ray imaging with reading a chip card that contains information as taught by Pronk with information of an identification of agents or implants inserted as suggested by Banik et al and Malackowski instead of patient information; in order to provide proper x-ray exposure [see 0073, Banik et al] and with Whipple et al by using the computer or controller to read the code that contains to control image contrast between the implant or adjuvant and surrounding areas; in order to increase visualization.

Applicant also argues that a Banik doesn't use a control to control parameters according to the identification code.

The examiner disagrees because Banik et al disclose control cabinet may also contain a barcode scanner or radio frequency identification RFID scanner, which would allow the identification of tools that are inserted into the working channel of the endoscope [see 0093-0094].

Furthermore, Banik et al disclose implantation of bulking agents, implants and replacement of valves or other techniques to aid in closure of the lower esophageal sphincter (LES) [see 0227].

Banik et al disclose imaging subsystem coupled to control cabinet that adjusts parameters of imager such gain, or intensity of LED image sensors based on inserted tools [see 0073-0074, 0084]. As explained herein, the implants would have been scanned with an identification code and the imaging subsystem would adjust the intensity of the imager based on the type of implants or agents inserted. .